
FREE PRESS: FUNDAMENTAL COMPONENT OF EFFECTIVE DEMOCRACY

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ABSTRACT

In simple terms freedom of press can be defined as *the freedom to print and publish what one pleases, without prior permission*. A free press is very essential for the proper functioning of a democracy. It serves as a powerful obstacle to any abuse of power by government. The importance conferred to freedom of the press can be contemplated from the fact that in contemporary times it is called the fourth pillar of a democratic government. According to the Indian Press Commission,

“Democracy can thrive not only under the vigilant eye of its Legislature, but also under the care and guidance of public opinion and the press is par excellence, the vehicle through which opinion can become articulate.”

This shows that freedom of press has an essential role in the success of a democracy. It is necessary to note that freedom of press does not find any explicit mentioning in the Indian Constitution, however it is implied under Art. 19(1)(a) of the Constitution.

CONSTITUTIONAL PERSPECTIVE

As mentioned previously there is no specific provision in Indian Constitution guaranteeing the freedom of press because it is deemed to be implicit in the right to freedom of speech and expression guaranteed by Art. 19(1)(a). Unlike the American Constitution which expressly guarantees freedom of the press, Art 19(1)(a) does not expressly mention the liberty of the press. In this regard it was made clear by Dr. B.R. Ambedkar, that “no special mention of the freedom of the press is necessary at all as the press and an individual or a citizen are the same so far as their right of expression is concerned.” The following observation was made in *Indian Express Newspaper v. Union of India*,¹ with regards to the freedom of press;

“The expression ‘freedom of the press’ has not been used in Art. 19 but it is contemplated within Art 19(1)(a). The expression means freedom from interference from authority which would have the effect of interference with the content and circulation of newspapers. There cannot be any interference with that freedom in the name of public interest. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments. Freedom of the press is the heart of social and political inter-course. It is the primary duty of the courts to uphold the freedom of press and invalidate all laws or administrative actions which interfere with it contrary to the constitutional mandate.”

As the freedom of speech and expression is guaranteed to a citizen, and not to a person, a non-citizen running a newspaper, is not entitled to the benefit of freedom of the press. Moreover, freedom of the press in India stands on no higher footing than the freedom of speech and expression of a citizen and no privilege attaches to the press as such as distinct from the freedom of the citizen. An important thing to note is that freedom of press is also subject to the limits imposed by Art. 19(2) on the freedom of speech and expression. Thus, freedom of press is not an absolute freedom just like freedom of speech and expression.

JUDICIAL STAND ON FREEDOM OF PRESS

After more than 7 decades of independence no one can deny the fact the Indian Courts have afforded the press and the journalists protection against arbitrary state actions. But at the same time they have also reiterated from time to time that the liberty of the press stands on no higher footing than the freedom of speech and expression of a citizen and no privilege attaches to the position of the press as such, that is to say, as distinct from the right of the citizen. A perusal

¹ (1985) 1 SCC 641.

of the following cases will make it more clear that how Indian judges have viewed the freedom of press.

In *Romesh Thappar v. State of Madras*,² an order issued under section 9 (1-A) of the Madras Maintenance of Public Order Act, 1949, banning the entry and circulation of a journal, 'Cross Roads' in the State of Madras, was held as imposing an unconstitutional restriction on the freedom of the press as guaranteed in Art. 19(1)(a) of the Constitution. It was observed by Justice Patanjali Sastri that "there can be no doubt that freedom of speech and expression includes freedom of propagation of ideas and that freedom is ensured by the freedom of circulation."

In *Printers (Mysore) Ltd. v. Asstt. Commercial Tax Officer*,³ the Supreme Court held that no sale-tax can be imposed on sale of newspapers in the country. However, the court clarified that this does not mean that press is immune either from taxation or from general law relating to industrial relations or from the state regulation of condition of service of its employees.

In *Sakal Papers Ltd. v. Union of India*,⁴ a matter of far-reaching importance affecting the freedom of the press was raised by questioning the constitutionality of the Newspapers (Price and Page) Act, 1956, and the Daily Newspapers (Price and Page) Order, 1960. The effect of the Act and of the impugned order was to regulate the number of pages of a newspaper according to the price charged, prescribe the number of supplements to be published and prohibit the publication of sale of newspapers in contravention of any order made under section 3 of the Act; the Act also provided for regulating the size and area of advertising matter in relation to other matters contained in a newspaper. The petitioners, the owners of Sakal Newspapers, along with its two readers, pointed out that the order would have the effect of either compelling all newspapers to increase the price or to reduce the number of pages of practically every newspaper in the country as also of preventing them from publishing supplements without extraneous restrictions, which they were able to do so far. It was, therefore, argued that the Act and the impugned order were designed to curtail the freedom of the press, and as such were violative of the right guaranteed under Art. 19 (1) (a) of the Constitution. In reply it was submitted by the respondents that the true purpose of the impugned legislation was to prevent unfair competition amongst newspapers as also to prevent the ties of monopolistic combines so that newspapers might have fair opportunities of free discussion. However, the court

² A.I.R. 1950 S.C. 124.

³ (1994) 2 SCC 434.

⁴ AIR 1962 SC 305.

accepted the argument of the petitioners. It was observed that the impugned legislation directly interfered with the freedom of the press as it affected not only the right of a citizen to circulate news and views but also its volume of circulation. The fixation of a minimum price for a number of pages which a newspaper was entitled to publish expressly cut down the volume of circulation of the newspapers by making the price so unattractively high for a class of readers as was likely to deter it from purchase of such newspapers. Justice Mudholkar was unhesitatingly of the opinion that the legislation was a direct and immediate, and not incidental encroachment on the right to freedom of the press; it was a device to encroach on the right to freedom of the press under the guise of placing restrictions on the commercial aspect of the newspaper activity.

In *Bennet Coleman Company v. Union of India*,⁵ the Court held that freedom of the press is both quantitative and qualitative. Freedom lies both in circulation and in content. The fixation of page limit will not only deprive the petitioners of their economic viability but also restrict the freedom of expression by compulsive reduction of page level entailing the reduction of circulation and the area of coverage for news and views.

FREEDOM OF PRESS AND MEDIA TRIAL

With the rise of electronic media around two and a half decades ago a new trend has emerged that of media trial. A media trial is a popular expression referring to the media acting as judge, jury and executioner and declaring the accused in a particular case as a convict even before the court passes its judgment. The deaths of Aarushi Talwar in 2008 and Sheena Bora in 2015 were targeted by Indian media, and most recently, the death of actor Sushant Singh Rajput has garnered similar media coverage, leading once again to a conflict with the fundamental human right to privacy. Thus, one wonders, has the media been given an exceptional right by the Indian constitution to intrude into the privacy of individuals in the name of “freedom of the press”?

The primary reason for the growing intensity of media trials is that there is no statutory regulatory mechanism for the media. It is governed by several self-regulatory bodies, such as the News Broadcasters Association, Broadcast Editors Association and the News Broadcast Federation. In fact, the members of all such self-regulatory bodies include the office bearers of leading news channels. And if the government tries to take some steps, then it is opposed by the so called champions of the freedom of press. Recently this was seen when certain guidelines were issued by the central government for regulating social media platforms.

⁵ AIR 1973 SC 106.

Today, newsrooms have literally turned into courtrooms. The facts of the particular case in all their lurid details, full particulars – correct or otherwise - the various steps and stages of police investigation, freely embroidered with subjective comments and observations are presented, evidence discussed, expert opinion sought, even the public is given an opportunity to participate in this process. They can send in their views by sms or by logging on to the channel's website. This forces one to believe, howsoever reluctantly, that there exists a system of parallel justice administration in the country. At present media can bully its way into anybody's life under the veil of freedom of press. Every constitutional and statutory right including privacy of individuals have been trampled upon with impunity by this class. The 'doctrine of innocence until proven guilty' is openly flouted and the fundamental right of the accused 'to have a fair trial' is put to dust.

Ex speaker of Lok Sabha Somnath Chatterjee, once made a noticeable observation in the context of freedom of press. He said:

“Freedom of the press, a cherished fundamental right in the country, is subject to reasonable restrictions as contemplated by the Constitution itself. It cannot and does not comprise deliberately, tendentious and motivated attacks on the great institutions of this Republic, and their officers and functionaries. Freedom of the press does not also contemplate making reckless allegations, devoid of the truth and lacking in *bone fides*. In the name of exercising freedom of the press, there cannot be trial by press in which it plays the role of both the accuser and judge. Freedom of the press also encompasses the fundamental duties of the press. These call for showing respect for others and responsible behavior, and cannot permit denigration of constitutional bodies and institutions and their important segments.”

In *State of Kerala v. Poothala Aboobacker*,⁶ the High Court of Kerala observed: “The Fourth Estate does not seem to realize the irreparable damage inflicted on the victims of crimes and the alleged culprits and those close to them through the sensationalized journalistic adventures. Truth is very often surpassed, exaggerated or distorted to add flavour and spice to the stories. Trial by media can do more harm the good to the society at large. Instances are not rare when test parades are reduced to mere farce due to the injudicious publicity given to the alleged assailants by publishing their photographs. Every such act of adventurism exerts unnecessary pressure on the Courts which are to eventually try the alleged offenders.

⁶ 2006(2) KLD (Cr 1 482).

Considering that currently there are no precedents set for the media channels to regulate their tendency of conducting parallel trials courts should take *suo moto* cognizance of this transgression until a proper law for eliminating media trails comes into force in India.

GOVERNMENT AND FREEDOM OF PRESS

During the debates of the Constituent Assembly the first Prime Minister of India, Pandit Jawaharlal Nehru had emphasized the importance of the freedom of press in the following words: “I should rather have a completely free press, with all the dangers involved in the wrong use of that freedom, than a suppressed or regulated press.” When such a statement is made by the Prime Minister of a country then one would wonder that Indian Government would have readily accepted freedom of press up to an unlimited extent. However the reality is quite different. The press and government have locked horns continuously since independence.

The Britishers had developed extended enabling legal processes and passed enactments like Official Secrets Act, 1923 & Indian press (Emergency) Powers Act 1931, in order to curb the freedom of press. Thus, they left behind a policy of considerable governmental unease about the relationship between the government and the press. Since Independence, this unease has often deepened into a mutual distrust and bitter resentment. To the armoury of legal controls left behind by the British were added the government's allocative control of newsprint, the denial of lucrative government advertising, fixing price, page and news, advertisement ratios and direct forms of political censorship. The relationship between the press and the government became very fragile during the tenure of Prime Minister Indira Gandhi. Her attempt, during the Emergency (1975-77), to wipe out the freedom of press in its entirety seemed in retrospect to give greater strength to the latter. At that time press was depicted as a threat to law and order. This plea was used to justify pre-censorship, externing journalists from specific local areas, preventive detention and possible prosecution and conviction under several provisions of the Indian Penal Code. The extent to which the Congress government made a mockery of the freedom of press during the emergency period can be understood from the fact that at that time pre-censorship was imposed by executive order and certain instructions were issued by the executives which were binding in nature. One such instruction was that —Nothing is to be published that is likely to convey the impression of a protest or disapproval of a government measure. All such actions which were likely to cause the criticism of the government or actions of the government were put under the blanket ban. Although since emergency India has not witnessed such a crackdown on the freedom of press. But still, from time to time, incidents of

government press conflict are seen. The rise of social media has further aggravated the situation.

Recently the Paris based Reporters Without Borders (RSF) published its annual World Press Freedom Index (WPFI). It placed India in a list of 180 countries at 142nd place. There were widespread debates about India's position in this index. Going by this report it seems that there is a great threat to press freedom in India. However, the reality is not so. At present it is seen that the media wants to extend the freedom of press to an unlimited extent and thus make a mockery of the restrictions imposed on this freedom by Art 19 of the Constitution. And when the government takes any steps to regulate such behavior, it is opposed in the name of press freedom. Therefore presently it seems that the tussle between the media and government is not heading towards an end.

CONCLUSION

Freedom of press is an issue that has led to endless number of debates across the democratic world in the past few decades. Undoubtedly, media forms the backbone of a democratic society. It subjects the functioning of all public institutions to public scrutiny, and makes them answerable and accountable to the public to whom they have to serve. It also plays an important role in assisting in administration of justice. But it has to be kept in mind that media has some responsibilities also. At present it seems that it has either forgotten them or it does not want to remember them. It is for this reason that a need arises to regulate this freedom of press. There are many things that are wrong with the press which must be taken note of by the press itself if it wants to continue its job as a watchdog of democracy.